



Transmission Services

Resale of Transmission Service, V5

Response to Customer Comments

Posted: June 9, 2011

This document contains the Transmission Customer comments and Transmission Services' response to those comments for the Resale of Transmission Service, V5, Business Practice posted for review from September 27, 2010 through October 12, 2010.

Effective 05/12/2011, BPA Transmission Services took an interim step to clarify its Resales Business Practice by providing limits to expansion costs above BPA's maximum transmission rate for pricing resales. These changes, made in response to customer requests, can be found within the Resale of Transmission Service Business Practice in a new section named "Pricing of Resale Transactions". The new language, consistent with BPA's current Open Access Transmission Tariff (OATT), provides a BPA system expansion cost (estimated at \$27.48/MWh) to be used when determining the maximum amount at which a customer can resell its transmission. BPA notes that the Price Cap question is being discussed in the BPA Open Access Transmission Tariff (BOATT) Workshops, a public forum. The revision of the Resale Business Practice is not intended to predetermine any BOATT process outcome. This interim measure is intended to add greater certainty until an agreeable alternative can be developed.

Thank you for your comments.

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1. Portland General Electric Merchant

PGEM appreciates the opportunity to comment on BPA's Resale of Transmission Service, Version 5. We recognize that the issue of the continued applicability of customers' independent market-based rate schedules for capacity reassignments on BPA's system is pending before the Federal Energy Regulatory Commission. Our comments below pertain to those situations in which BPA's tariff provisions might apply.

Based on meetings with BPA it is clear that BPA realizes the impact that reestablishing a transmission resale price cap will have on their customers. While we appreciate that BPA is attempting to reduce the level of risk they are exposing their customers to; we feel that the proposed Business Practice will have negative impacts on its customers and on the secondary market for transmission capacity. PGEM also believes that BPA should implement FERC's filing on the permanent removal of the transmission resale price cap.

The BPA staff who attended the October 5, 2010 conference call on transmission resales indicated that it would take a minimum of six weeks for BPA to determine if a resale transaction would be deemed acceptable to BPA. Parties must have the ability to enter into agreements to resale transmission capacity in a timely manner with a full understanding of all terms and conditions. As a legal matter, BPA cannot insert itself into a valid transaction to which it is not a party, and modify the terms and conditions of the transaction. If BPA implements their proposed Resale of Transmission Service Version 5 there is concern that the developing transmission resale market will be negatively impacted thereby reducing the optimization of existing transmission assets.

On the October 5th call BPA staff also indicated that they did not know what they would consider outside of section 23.1 of BPA's Open Access Transmission Tariff but they "would know it when they saw it." BPA needs to provide its customers with a formula to provide clarity as to which prices are consistent with the provisions and which aren't. A "we'll know it when we see it" standard will only foster confusion and could potentially raise concerns about discriminatory treatment.

A base question that must be asked of BPA is why it is not accepting FERC's permanent removal of the price cap? Arguments put forth by BPA staff on the October 5th call regarding why BPA is not supporting the permanent remove of the price cap were not supported by facts and appear at best unclear to those presenting them. While we do not fully understand the basis for BPA's refusal to permanently remove the price cap based on "regulatory issues" we note that BPA was able to successfully remove the price cap for the entire term of FERC's study period. BPA has not presented any data that indicates the permanent removal of the price cap has caused any harm nor has BPA provided any indication as to why they feel that it could cause harm to their customers.

PGEM encourages BPA to fully accept and implement FERC's final ruling permanently removing the transmission resale price cap. PGEM is concerned that BPA's proposed Transmission Resale Business Practice jeopardizes a developing secondary transmission market, prolongs BPA's lack of reciprocity, leads to inefficiencies in the use of transmission and could produce negative consequences on both a commercial and a seams basis.

Transmission Service's Response

Thank you for your comments. In response to PGEM and other customers' comments set forth below, BPA is proposing another revision to its Resale Business Practice which includes a "cost of expansion," which is the third prong of the price cap set forth in Section 23.1 of BPA's Open Access Transmission Tariff (OATT). This prong of the price cap currently establishes the transaction price limit (cap) for resales on BPA's transmission system.

BPA believes that the proposed cost of expansion (\$27.48 MWh) will provide adequate price flexibility and certainty to its customers while also providing an adequate safeguard against potential market abuses and unlawful use of the Federal transmission system. Based on historical resale data on BPA's system which show that the overwhelming majority of resale transactions are done at or below BPA's reference price for the Resellers' costs of purchasing transmission (including ancillary services and losses— \$4.75 MWh) directly from BPA, the cost of expansion being proposed by BPA should not hinder resale transactions on its transmission system. For the 2010 and 2011 calendar years to date, approximately 99.9% of resale transactions reported on BPA's system have been at or below the \$4.75 MWh reference price, far below BPA's proposed cost of expansion.

Additionally, in response to PGEM and other customers' comments, BPA also notes that since the price cap was reinstated on October 1, 2010, BPA has experienced record numbers of resale transactions on its system. As a result, reinstatement of the price cap has not had a negative impact on resale transactions on BPA's system.

Lastly, BPA notes that it has not yet determined a long-term approach to resale transactions under its OATT. BPA is currently engaged in a collaborative process with its customers and Pacific Northwest region concerning the substance and administration of its OATT, which includes the pricing of resale transactions. Depending on the outcome of that process, it may be necessary to modify this Resale BP at a later date.

2. Seattle City Light

Seattle City Light (Seattle) appreciates this opportunity to comment on BPA's "Resale of Transmission Service - Version 5" posted on September 27, 2010. Seattle is encouraged by BPA's efforts to respond rapidly to customer concerns regarding BPA's decision to reinstate its price cap on resales of transmission service as memorialized in section 23.1 of BPA's Open Access Transmission Tariff (OATT). In response to customers concerns, BPA has attempted to clarify in section 5 of its Resale of Transmission Service business practice its criteria for monitoring compensation to the reseller. While Seattle appreciates BPA efforts, Seattle believes that ultimately the best course of action by BPA is to modify its OATT to permanently lift its price cap on transmission resales pursuant to FERC's Final Rule on its Notice of Proposed Rulemaking (RM10-22-000; Order No. 739). Seattle reasons are as stated in Seattle's comments to FERC on its RM10-22-000 which are attached.

Transmission Services' Response

[Thank you for your comments. Please see response to PGEM above.](#)

3. Iberdrola Renewables, Inc.

Iberdrola Renewables, Inc. (IRI) appreciates the opportunity to comment on the proposed Resale of Transmission Service business practice. As a general matter, IRI is supportive of Bonneville Power Administration's (BPA) attempt to address broad-based customer concerns raised at the September 22, 2010 "COI Utilization" meeting relative to BPA's proposal to reinstate a price cap on transmission resales. To summarize the feedback BPA received from customers at that meeting and elsewhere, it is fundamentally contradictory for BPA to seek efficient utilization of its transmission system, and to maximize usage of key export paths, but at the same time to reinstate a price cap that reduces the liquidity of the resale market. BPA, to its credit, seems to acknowledge this concern and thus has developed the proposed business practice. IRI submits the following comments with regard to the proposed business practice:

1. FERC Order No. 739 and BPA's Reciprocity Status

IRI seeks clarification on how this proposed business practice relates to the Federal Energy Regulatory Commission's (FERC) September 20, 2010, Final Rule on Promoting a Competitive Market for Capacity Reassignment (Order No. 739, 132 FERC 61,238 (2010)). In Order No. 739, FERC directed transmission providers to file changes to Section 23 of their respective Open Access Transmission Tariffs (OATTs) as specified in Appendix B to the Order, by October 25, 2010. Order No. 739 at P 37. In that docket, BPA had specifically requested that FERC grant a blanket waiver of the filing requirement for non-jurisdictional entities that are unable to satisfy reciprocity conditions with regard to the reassignment of transmission capacity. *Id.* FERC denied BPA's request for a waiver without prejudice, stating "[w]hether the particular terms and conditions of a non-jurisdictional transmission provider's reciprocity tariff satisfy the Commission's open access principles must be determined on a case-by-case basis." *Id.* BPA has not made a filing to incorporate the Section 23 changes ordered by FERC, nor has it made a filing seeking FERC's review and approval of any alternative OATT language. IRI seeks clarification as to whether BPA intends to make either one or the other of the required FERC filings.

Transmission Services' Response

[Thank you for your comments. BPA and its customers continue to discuss the resales issue and other BPA OATT issues in a collaborative process to endeavor to arrive at a consensus solution.](#)

2. BPA's Role in Monitoring the Market for Capacity Reassignment

IRI requests that BPA be more specific as to what its role in monitoring the resale market will entail, and the statutory basis for any such activity. We understand that BPA is concerned that lifting the price cap on capacity reassignments may interfere with BPA's ability to implement Sections 838(b) and 838(d) of the Federal Columbia River Transmission System Act, which provide for the BPA Administrator to operate and maintain the Federal transmission system within the Pacific Northwest and to "make available to all utilities on a fair and nondiscriminatory basis, any capacity in the Federal transmission system which he determines to be in excess of the capacity required to transmit electric power generated or acquired by the United States." BPA is interpreting this language as requiring it to somehow

"monitor" the capacity reassignment market. BPA explained on an October 5, 2010, conference call with customers that it did not have standards for determining whether reassignment pricing was manipulative, but said that BPA would "know it when [they] see it." BPA was further unable to explain what action it could or would take in the event it saw such behavior. Whether or not BPA is statutorily required to undertake a market monitoring role, to the extent it endeavors to do so, IRI encourages BPA to be as "hands off" as possible in performing any such monitoring. A capacity resale market in which BPA injects itself into a transaction to deem appropriate, or not, a capacity resale that two parties have willingly entered into would be unworkable. We understand that BPA believes that allowing above-tariff assignments might potentially be inconsistent with other BPA statutes, but it is not clear to IRI that any such conflict exists.

[Transmission Services' Response](#)

[Thank you for your comments. Please see response to PGEM above.](#)

4. Powerex

Powerex thanks BPA for the opportunity to comment on the first draft of the business practice and for the customer conference call, and also thanks staff for their efforts to answer customers' questions. We appreciate the fact that BPA recognizes the importance of this issue to customers, and has acted quickly to respond to customers' concerns. We are also pleased that BPA has agreed to revise the business practice to include more information, and will allow customers the opportunity to comment on the revised document.

However, Powerex continues to believe that, in order to facilitate the development of a market for transmission capacity assignments as FERC intended, BPA should lift the price cap for transmission assignments on its system. In Powerex's view, BPA's refusal to lift the price cap will act as a significant barrier to the development of the secondary market in transmission on BPA's system. As the biggest demand for transmission resales on BPA's system will likely be from renewable generators, particularly intermittent generators, BPA's refusal to lift the price cap may impede the integration of renewable generation within its Balancing Authority Area.

Powerex hopes that BPA will re-consider its decision not to lift the price cap; however, if it does not do so, Powerex believes that all the terms or conditions governing the reassignment of capacity should be addressed in BPA's tariff and not in a business practice. In this regard, Powerex believes that BPA should formally amend its tariff to include the specific circumstances under which BPA would not consider a customer's market-based reassignment to be at its opportunity cost capped at BPA's cost of expansion.

If BPA does not revise its tariff, it is essential that its business practice provides clarity to customers regarding the compensation that will be considered to meet the requirements of its OATT and the consequences to customers if the compensation paid under a resale exceeds the amount BPA considers acceptable. The development of a market for transmission reassignments on BPA's system will be severely hindered if there is uncertainty regarding the compensation BPA will consider acceptable under section 23.1(iii) of its OATT.

In this regard, Powerex notes that there is no certainty in the current draft of the business practice regarding:

1. The price BPA will consider acceptable for transmission reassignments;
2. The length of time BPA will take to determine whether the price is acceptable;
3. The criteria BPA will use to determine whether the price is acceptable; and
4. The steps BPA will take if it decides the price is not acceptable.

Each of these areas of uncertainty is discussed in more detail below.

1. Lack of certainty regarding the price that may be considered acceptable for a transmission assignment

Section 23.1 of BPA's tariff provides that for resales of capacity, "compensation to the Reseller shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion....".

If customers wish to assign transmission on BPA's system, they will not know with certainty whether they meet the requirements of section 23.1 unless they know BPA's cost of expansion on the specific transmission path on which the resale is to occur. On the recent customer conference call, BPA staff indicated that BPA does not have information regarding the cost of expansion on the various parts of its system. In the absence of this information, Powerex believes that the price that customers negotiate for the resale of transmission should be deemed to fall within section 23.1(iii). Alternatively, BPA should conduct expansion studies on its system in order to provide customers with the information they need to determine whether they comply with section 23.1 of BPA's tariff.

In any event, Powerex believes that BPA should advise customers before the fact, rather than after the fact, of the price(s) it will consider acceptable to meet the requirements of its OATT.

Transmission Services' Response

[Thank you for your comments. Please see the response to PGEM above.](#)

2. Lack of certainty regarding the length of time BPA will take to determine whether the price of a transmission reassignment meets the requirements of its OATT

On the customer conference call, BPA staff indicated that they did not know how long it would take to determine whether the price of a transmission reassignment would be considered to meet the requirements of the OATT. Powerex got the impression, however, that this could take several weeks and possibly longer. This is a serious concern and another area of uncertainty for customers. In the case of short-term assignments, the assignment could be completed and the compensation paid to the Reseller before BPA advised the affected customers that it had concerns as to whether the compensation fell within section 23.1(iii) of its tariff.

In the case of longer-term assignments, the assignee may be entering into another transaction that is contingent upon obtaining the transmission assignment (i.e. it may need the required transmission in order to deliver energy from another transaction to its intended destination.) Similarly, a Reseller may agree to enter into a transmission assignment agreement contingent

upon receiving a particular price, and may not be interested in assigning the transmission for a lower price.

Transmission Services' Response

Thank you for your comments. Please see the response to PGEM above.

3. Lack of certainty regarding the criteria BPA will use to determine whether the compensation paid to a Reseller meets the requirements of its OATT

The draft business practice states that BPA will assume that, "unless there is evidence to the contrary", resales of transmission at a price above BPA's rate will fall within the requirements of section 23.1(iii). On the customer conference call, however, staff was unable to provide an example or any information regarding the type of evidence that is referred to in the business practice. Although staff referred to "abuses" and "negative impacts on the Northwest energy market", they were unable to elaborate further on the type of information that may lead BPA to believe that the compensation paid to a Reseller is inappropriate.

The absence of any information regarding the criteria BPA will use to determine if the compensation paid under a transmission assignment is appropriate creates enormous uncertainty for customers. Although BPA appears to be trying to give customers comfort that resales of transmission at a price above BPA's rate will fall within the requirements of section 23.1(iii), customers cannot rely on this if they have no information as to the type of transactions that BPA will consider to be evidence that the price does *not* meet the requirements of its OATT.

Powerex does not understand why BPA is so vague on this issue or its rationale for not lifting the price cap in accordance with FERC's final ruling. On the customer conference call, staff seemed to indicate that BPA cannot lift the price cap because of a statutory duty or responsibility; however, staff could not elaborate on the nature of this obligation. Powerex notes that BPA was able to lift the price cap on transmission assignments for almost two years so it is difficult to understand why it is now barred from doing so because of a statutory obligation.

BPA has claimed that safeguards are needed on resale transactions to protect against "potential issues," although it has not specified its concerns. These assertions seem inconsistent with comments that BPA submitted to FERC in the rulemaking proceeding, which acknowledged that "the data shows that the majority of capacity reassignments during the study period were below the tariff rate and 99 percent were at or below the price cap had it been imposed. The data for the study period does not show any manipulative or unreasonable behavior on the part of transmission customers who sold capacity on the secondary market."

As requested by another customer, Powerex would appreciate it if BPA would provide customers with information regarding the statutory obligation referred to on the call, and with examples and information regarding the evidence BPA will consider sufficient to determine that the compensation paid to a Reseller under a transmission assignment does not fall within section 23.1(iii).

Transmission Services' Response

Thank you for your comments. Please see the response to PGEM above.

4. Lack of certainty regarding the steps BPA will take if it decides the compensation paid to a Reseller does not meet the requirements of its tariff

BPA has not also provided customers with any information regarding the steps it intends to take if it determines that the compensation paid to a Reseller does not fall within section 23.1(iii) of its OATT. Powerex notes that BPA has chosen not to act as the intermediary in transmission assignments, and the agreement to assign transmission at a particular price will be between the Reseller and the assignee. As noted above, in the case of short term assignments, the assignment may be completed and the compensation already paid to the Reseller by the time BPA determines that it has concerns regarding the amount of compensation that was paid.

Powerex believes it is critical that BPA advise its customers as soon as possible of the actions it intends to take if it decides that the compensation paid to a Reseller does not meet the requirements of its OATT. Failure to do so will result in commercial uncertainty and have a chilling effect on the development of the secondary market in transmission on BPA's system.

In Powerex's view, it is unfair that customers may face potential consequences because BPA advises them after the fact, and not before the fact, that a particular price paid for a transmission assignment does not fall within its OATT. It seems equally unfair if customers are put in the situation where, by trial and error, they find out whether certain prices meet BPA's approval or not.

Transmission Services' Response

Thank you for your comments. Please see the response to PGEM above.

5. Northwest & Intermountain Power Producers Coalition (NIPPC)

First, NIPPC has no objection to a market monitoring function in connection with transmission capacity resale provided that there are clear, objective parameters and that, most importantly, the function be managed by an independent third party. BPA must not assume this responsibility given that as a PMA, Bonneville is a market participant as well as a transmission provider.

Transmission Services' Response

Thank you for your comments. BPA is currently discussing the possibility of using a market monitor with customers in the BOATT process.

In addition, NIPPC takes serious issue with BPA policy enunciated in section 23.1 of its Open Access Transmission Tariff (OATT) specifically: "...regarding resales of capacity, "compensation to the Reseller shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion...." BPA will continue to monitor the transmission resales market. However, BPA

will assume that, unless there is evidence to the contrary, resales of transmission at a price above BPA's rate fall within the requirements of section 23.1 (iii) of the OATT."

Transmission Services' Response

Thank you for your comments. Please see the response to PGEM above.

The clause (iii) could not present a more uncertain situation to market participants both for future transactions and active resale arrangements. The language is utterly confusing and any attempt to define its meaning, and define the "cap," impossible.

Transmission Services' Response

Thank you for your comments. Please see the response to PGEM above.

NIPPC urges Bonneville to reconsider its overall policy both in principle -- as a market participant BPA cannot serve as a market monitor -- and in practice -- its definition in (iii) is unintelligible.

Transmission Services' Response

Thank you for your comments. Please see the response to PGEM above